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9
10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JUANITA RAMIREZ,

17 Defendant.

1:19-CR-02058-SMJ-4

United States' Response to
Defendant's Motion for Severance

18 Plaintiff, United States of America, by and through William D. Hyslop,
19 United States Attorney, for the Eastern District of Washington, and Patrick J.
20 Cashman, Assistant United States Attorney for the Eastern District of Washington,
21 respectfully submits the following response to Defendant's Motion to Suppress
22 Statements and Evidence Stemming from Search Warrant. (ECF No. 100).

23 **I. Introduction**

24 The Defendant, Juanita Ramirez, argues the statement she made to a
25 Detective Tucker of the Yakima County Sheriff's Office (YSO) on August 1,
26 2019, was taken in violation of her constitutional rights because the attorney whose
27 presence she requested may have had a conflict of interest. The United States
28 contends first, the Defendant knowingly, intentionally, and voluntarily waived her

1 rights pursuant to *Miranda v. Arizona*, second, there was no government
2 misconduct warranting suppression, and third, assuming *arguendo* her attorney a
3 conflict of interest, the Defendant waived it. Defendant's Motion to Suppress
4 should be denied and any evidence obtained as a result of Defendant's statement is
5 fully admissible.

6 **II. Factual Background**

7 On July 31, 2019, at approximately 12:04 a.m., YSO deputies were
8 dispatched to the address of 171 N. Outlook Road in reference to a robbery that
9 just occurred. The deputies were advised that the victim was just robbed and
10 beaten at gun point prior to his car being taken. Upon arriving on scene, the
11 deputies observed severe swelling to his mouth and face as well as fresh cuts to his
12 right and left hands.
13

14 While speaking with the victim, he identified the initial perpetrators as two
15 males as "Grinch" and "Chato" and a third male as Miguel Navarrete. The victim
16 detailed he was in the rear seat behind the driver's seat. The victim stated "Chato"
17 opened the driver side door, while "Grinch" attempted to enter the car from the
18 passenger side. The victim stated that "Grinch" brandished a firearm and ordered
19 him to open the door, at which point he was physically assaulted.¹
20

21 As the victim was being assaulted, a white Chrysler 300 (owned by attorney
22 Bill Schuler) driven by Juanita Ramirez, arrived and a fourth male exited the front
23 passenger seat and assisted in taking the victim's red Mazda Tribute. The fourth
24 individual, believed to be "Shooter," entered the driver's seat of the victim's
25 vehicle. The victim tried to stop "Shooter" from taking his vehicle. In response
26 "Shooter" stated, "They call me Shooter, don't make me shoot you," and then
27

28 ¹ The victim has provided numerous statements in this case. The factual recitation summarizes information provided pursuant to the various statements.

1 motioned to his pocket. The victim observed what he believed to be the butt of a
2 handgun.

3 Subsequently, “Shooter” drove off in the victim’s vehicle followed by the
4 white Chrysler 300 being driven by Juanita Ramirez, with “Chato” as a passenger.
5 The remaining individuals drove off in two other vehicles.

6 The following day, on August 1, 2019, a Zillah Police Department patrol
7 officer observed a white Chrysler 300 matching the description of the vehicle used
8 in the commission of the carjacking. The patrol officer initiated a traffic stop. The
9 Defendant, Juanita Ramirez, was identified as the driver. There was another
10 female passenger, who was subsequently released from the scene after
11 identification. Prior to being transported to the Yakima County Sheriff’s Office, a
12 deputy sheriff advised the Defendant of her *Miranda* warnings. See Attachment A
13 (Report of Sgt. Peterschick, dated August 1, 2019). The Defendant stated that she
14 would waive her rights. Upon arrival at the YSO Precinct, the Defendant
15 requested to speak with her attorney, “Bill Schuler,” prior to speaking with
16 Detective Tucker. Sgt. Peterschick attempted numerous times to reach Mr. Schuler
17 with negative results.

18
19 Upon Detective Tucker’s arrival, the Defendant was again advised of her
20 *Miranda* warnings, which she agreed to waive in writing. However, the Defendant
21 again requested to attempt to reach Mr. Schuler by phone. See Attachment B
22 (Report of Detective Tucker, dated August 1, 2019). The Defendant attempted
23 contact with Mr. Schuler but was only able to leave a voicemail. Detective Tucker
24 inquired into the Defendant’s willingness to speak to law enforcement without
25 having had the opportunity to confer with Mr. Schuler. The Defendant stated “I
26 have nothing to hide” and that she, “want[ed] to tell the truth.” Prior to any formal
27 questioning, Mr. Schuler returned Detective Tucker’s call. The Defendant was
28 given an opportunity to speak with Mr. Schuler in private. Subsequently, Mr.

1 Schuler advised Detective Tucker that he was en route to the precinct and that law
2 enforcement could interview his “client” upon his arrival. When Mr. Schuler
3 arrived, the Defendant and Mr. Schuler conferred privately for approximately
4 twenty to twenty-five minutes. *See* Attachment B. At the end of the private
5 discussion, Mr. Schuler advised Detective Tucker the Defendant wished to speak
6 with law enforcement.

7 Detective Tucker and two other officers entered the interview. Detective
8 Tucker asked the Defendant if she still understood her rights and was willing to
9 speak with law enforcement about the incident, the Defendant responded in the
10 affirmative. Mr. Schuler confirmed the Defendant was willing to answer
11 questions. Detective Tucker informed the Defendant that she was still being
12 arrested. The Defendant then stated that she understood and that she “did not want
13 to go down for what they did.” The Defendant proceeded to give a statement that
14 incriminated herself as well as others. Upon conclusion of the interview, the
15 Defendant was booked into the Yakima County Jail on a charge of Rendering
16 Criminal Assistance in the First Degree. *See* Attachment B.

18 **III. Law and Argument**

19 **A. The Sixth Amendment right to counsel is inapplicable because the** 20 **Defendant had not been charged.**

21 The Defendant, at the time of her arrest, had not been charged nor had
22 formal prosecution commenced. Therefore, Sixth Amendment protections are
23 inapplicable to the Defendant’s pre-charging statement. The Sixth Amendment
24 provides, “In all criminal prosecutions, the accused shall enjoy the right ... to have
25 the Assistance of Counsel for his defense.” U.S. Const. Amend. VI. The “right to
26 counsel attaches only at or after the initiation of adversary judicial proceedings
27 against the defendant by way of indictment, information, arraignment, or
28

1 preliminary hearing.” *United States v. Gouveia*, 467 U.S. 180, 187 (1984). The
2 Sixth Amendment protections are charge specific. *McNeil v. Wisconsin*, 501 U.S.
3 171, 175 (1991). Once a Defendant, who has been the subject of adversary judicial
4 proceedings by way of indictment, information, arraignment, or preliminary
5 hearing, has asserted their Sixth Amendment right to counsel, law enforcement is
6 prohibited from communicating about the circumstances of the charge without the
7 counsel present. However, since the Defendant had not been formally charged,
8 analysis under the Sixth Amendment right to counsel, and any type of conflict of
9 interest analysis under the Sixth Amendment, is not appropriate.
10

11 **B. The Defendant was provided counsel of her choosing.**

12 It is well-established that *Miranda v. Arizona*, 384 U.S. 436 (1966),
13 established a set of prophylactic rules to ensure that suspects’ Fifth Amendment
14 rights are protected. *See e.g. Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985).
15 Essentially, *Miranda* requires that suspects in law enforcement “custody” receive
16 warnings about their rights before they are subjected to “interrogation,” and that
17 any statement made by such suspect is the product of a knowing, intelligent, and
18 voluntary waiver. *See generally id.*; *Dickerson v. United States*, 530 U.S. 428, 444
19 (2000). The United States bears the burden of showing by a preponderance of the
20 evidence that there was a knowing, intelligent, and voluntary waiver of Fifth
21 Amendment rights. *See Colorado v. Connelly*, 469 U.S. 157, 167-69 (1986). A
22 waiver of *Miranda* rights does not have to be explicit – it may be implied by
23 answering questions after receiving the warnings. *See e.g. United States v.*
24 *Rodriguez-Preciado*, 399 F.3d 1118, 1127 (9th Cir.), *amended*, 416 F.3d 939 (9th
25 Cir. 2005), *cert. denied*, 549 U.S. 1214 (2007). A defendant’s waiver must be
26 “made with a full awareness of both the nature of the right being abandoned and
27 the consequences of the decision to abandon it.” *Berghuis v. Thompkins*, 560 U.S.
28 370, 382-83 (2010) (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

1 When a defendant invokes their right to counsel, all interrogation must cease
 2 until counsel is present. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981); *see*
 3 *also Minnick v. Mississippi*, 498 U.S. 146, 153 (1990) (holding that invocation of
 4 right to the presence of counsel continues after counsel and defendant have
 5 conferred).

6 The Defendant was permitted to confer with Mr. Schuler, which she did for
 7 20-25 minutes before the interview took place. Attachment B. She was provided
 8 the assistance of counsel of her choosing prior to being interviewed by law
 9 enforcement. Additionally, counsel of her choosing was present for the full
 10 duration of the interview. Therefore, the Defendant's right to counsel was
 11 appropriately safeguarded.
 12

13
 14 C. The Defendant knowingly, intelligently, and voluntarily waiver her right to
 15 silence.

16 i. Voluntariness

17 A statement following *Miranda* warnings will "rare[ly]" be deemed
 18 involuntary. *Dickerson v. United States*, 530 U.S. 428, 444 (2000). For a
 19 statement to be involuntary, it must be "extracted by. . . threats or violence"; or
 20 "obtained by. . . direct or implied promises" or "the exertion of improper
 21 influence." *United States v. Braxton*, 112 F.3d 777, 780 (4th Cir. 1997) (en banc),
 22 *cert. denied*, 522 U.S. 874 (1997).
 23

24 When determining involuntariness, the crucial inquiry is whether the
 25 defendant's will has been "overborne" or his capacity for self-determination
 26 critically impaired." *United States v. Pelton*, 835 F.2d 1067, 1071-72 (4th Cir.
 27 1987), *cert. denied*, 486 U.S. 1010 (1988); *accord Schneckloth v. Bustamonte*, 412
 28 U.S. 218, 225 (1973); *Braxton*, 112 F.3d at 781; *United States v. Wertz*, 625 F.2d
 1128, 1134 (4th Cir. 1980), *cert. denied*, 449 U.S. 904 (1980).

1 Before a finding of involuntariness is made, coercive government conduct is
2 required. *Connelly*, 479 U.S. at 165 (even if mentally ill defendant “ordered by the
3 voice of God” to confess felt “coerced,” the coercion was not attributable to the
4 government). *See also Braxton*, 112 F.3d at 781-83 (neither statement by agents
5 that they “needed” to speak to defendant nor their warning that he would “face five
6 years” if he did not “come clean” sufficiently coercive to render subsequent
7 statement involuntary); *United States v. Elie*, 111 F.3d 1135, 1143-44 (4th Cir.
8 1997) (“coercive police activity is a necessary predicate to a finding that a
9 statement is not voluntary within the meaning of the due process clause”),
10 *abrogated on other grounds by United States v. Sterling*, 283 F.3d 216 (4th Cir.
11 2002).

12
13 In determining voluntariness of a statement, a court examines “the totality of
14 the circumstances,” including the defendant’s individual characteristics and
15 background, the setting in which the statement occurred, and the details of the
16 interrogation or interview. *Elie*, 111 F.3d at 1143-44; *Pelton*, 835 F.2d at 1071;
17 *accord United States v. Van Metre*, 150 F.3d 339, 348-49 (4th Cir. 1998) (55 hour
18 delay between arrest and initial court appearance did not render confessions
19 involuntary in light of “totality of circumstances,” noting absence of “coercive
20 police conduct”). Likewise, to be voluntary, the circumstances surrounding the
21 interrogation or interview need not be entirely free from intimidation. *Braxton*, 112
22 F.3 at 780-82; *Pelton*, 853 F.2d at 1072. Rather, “[t]ruthful statements about [the
23 defendant’s] predicament are not the type of coercion that threatens to render a
24 statement involuntary.” *Braxton*, 112 F.3d at 782 (internal quotation and citation
25 omitted) (approving the practice of warning subject of additional charges and
26 penalties he may face for making false statements to interviewing agents or
27 officers).

1 The Defendant was not coerced to provide a statement in this case. To the
2 contrary, the law enforcement officers treated the Defendant with respect, advised
3 her multiple times of her rights, permitted her to contact her attorney numerous
4 times, and spoke frankly with the Defendant about the process and their intentions
5 at the conclusion of the interview. Moreover, law enforcement appropriately
6 waited to conduct any meaningful interview of the Defendant until after she met
7 with her attorney for approximately twenty to twenty five minutes. She was asked
8 at the conclusion of that private discussion if she still understood her rights and if
9 she still wanted to answer questions; Defendant responded to both that she did.
10 When considering the totality of the circumstances before the Court, the
11 Defendant's waiver was voluntarily made. Law enforcement did not engage in any
12 type of conduct that would overborne the will of the Defendant.
13

14 ii. Knowing and Intelligent

15 The second prong of waiver analysis looks at whether the waiver was
16 knowing and intelligent. Again, a knowing and intelligent waiver depends in each
17 case "upon the particular facts and circumstances surrounding that case, including
18 the background, experience, and conduct of the accused." *Edwards*, 451 U.S. at
19 482. A waiver is "knowing and intelligent if, under the totality of the
20 circumstances, it is made with a 'full awareness of both the nature of the right
21 being abandoned and the consequences of the decision to abandon it.' " *Id.* (citing
22 *U.S. v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (quoting *Burbine*, 475 U.S. at
23 421). It is irrelevant whether the defendant's decision is sensible, prudent, or wise.
24 *See United States v. Curcio*, 680 F.2d 881, 885-89 (2nd Cir. 1981) (quoting
25 *Faretta v. California*, 422 U.S. at 834) (stating in context of waiver of conflict in
26 joint defense representations but applicable in *Miranda* waiver context). As noted
27 in *Edwards*, the United States Supreme Court "consistently has rejected any
28 paternalistic rule protecting a defendant from his intelligent and voluntary

1 decisions about his own criminal case.” *Edwards*, 451 U.S. at 490-91 (internal
2 quotation omitted). The questions are: (1) was the defendant informed; and (2)
3 does the defendant have the capacity to make a rational decision. *Curcio*, at 885-
4 89.

5 When considering the totality of the circumstances, it is clear the Defendant
6 knowingly and intelligently waived her rights. The Defendant was informed of her
7 rights. The Defendant was properly informed of the consequences of waiving her
8 rights, in that anything she said could be used against her. The Defendant was
9 further informed that regardless of what she decided, law enforcement intended to
10 book her in jail. The Defendant signed a written waiver form after she had been
11 advised of her *Miranda* warnings at least twice. The Defendant stated that she
12 understood her rights and wished to waive these rights. The Defendant’s specific
13 requests to call her attorney, which law enforcement obliged and facilitated, is yet
14 another indication that she fully understood—and exercised—her rights.
15

16 The Defendant further indicated to law enforcement, in the presence of her
17 attorney after speaking with that same attorney, that she understood her rights and
18 still wished to speak with law enforcement. The Defendant speaks English
19 effectively. The Defendant also has prior experience with the criminal justice
20 system, having been arrested and convicted of an alcohol related traffic offense.
21 Having been advised of her rights on this occasion, she indicated she was willing
22 to speak to law enforcement after talking to her attorney, and that is precisely what
23 happened.
24

25 D. There was no Government misconduct warranting suppression.

26 The exclusionary rule prohibits the Government from using evidence that
27 was unlawfully seized. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963).
28 That is to say, the evidence is the product of illegal government activity. *Segura*,

1 468 U.S. 796, 815 (1984). The rule was created as a “means of deterring illegal
2 searches and seizures.” *Penn. Bd. Of Prob. & Parole v. Scott*, 524 U.S. 357
3 (1998). The suppression of evidence is a “last resort” and done “only where its
4 deterrence benefits outweigh its substantial social costs.” *Hudson v. Michigan*,
5 547 U.S. 586, 591 (2006). Thus, the evidence should only be excluded when but for
6 the illegality the evidence would not have been discovered. *Segura*, 468 U.S. at
7 815. In the Fifth Amendment context, suppression is a mechanism to remedy
8 failure to administer *Miranda* warnings where they are required. *Oregon v. Elstad*,
9 470 U.S. at 306.

10
11 Here there was no government misconduct of any kind, let alone misconduct
12 that resulted in the illegal collection of evidence. The Defendant was afforded the
13 right to counsel of her choosing after having been properly advised of her rights.

14 E. Assuming *arguendo* a conflict existed, the Defendant was aware of the
15 conflict and waived it.

16 The Defendant argues, after the fact, she did not make a “knowing and
17 intelligent waiver” because of Mr. Schuler’s alleged conflict of interest impacted
18 the effectiveness of his representation. However, that argument is belied by the
19 facts of this case. First, the Defendant has not identified a conflict of interest
20 beyond mere speculation—the Defendant has identified no advantage Mr. Schuler
21 gained via the advice given to the Defendant. Second, even assuming an other
22 than professional interest by Mr. Schuler, the Defendant has provided no evidence
23 to show the alleged conflict impacted the advice provided by Mr. Schuler. Instead,
24 the Defendant announced, upon hearing her rights, that she intended to speak to
25 law enforcement after she spoke to her attorney. The state of the record
26 demonstrates, Mr. Schuler did not cause his client to speak to law enforcement; the
27 Defendant had already announced her intention to speak with law enforcement.
28

1 The Defendant repeatedly indicated her willingness to speak with law enforcement
2 and reiterated she just wanted to tell the truth.

3 Again, assuming *arguendo*, Mr. Schuler had a conflict, the Defendant was
4 fully aware of any conflict of interest held by Mr. Schuler at the time of her
5 requests to confer with Mr. Schuler. The Defendant opines Mr. Schuler was
6 conflicted by his vehicle being involved in the criminal offense, the Defendant
7 residing in an apartment Mr. Schuler owns, and the desire to distance himself from
8 the acts of the Defendant. ECF No. 100 at pg. 5-6. The Defendant, however, at
9 the time she requested the presence of Mr. Schuler, was certainly in a position, to
10 be fully privy to these facts. To the extent there was a conflict, which the United
11 States does not concede, the Defendant knowingly waived it.

13 An attorney's conflict of interest can be waived by a defendant. *United*
14 *States v. Allen*, 831 F.2d 1487, 1494 (9th Cir. 1987). In considering the facts and
15 circumstances of this case, the Defendant's repeated requests for the presence of
16 Mr. Schuler, knowledge of any potential conflict, and continued waiver of her
17 rights, is confirmation she desired to waive any conflict of interest held by Mr.
18 Schuler. In this case, the Defendant was well aware of the consequences of her
19 waiver: (1) anything she said could be used against her; and (2) regardless of her
20 waiver, she was going to jail that evening. Still she maintained, just as she had
21 indicated prior to Mr. Schuler's presence, she wanted to speak to law enforcement
22 after she spoke to her attorney.

24 Moreover, the Government is entitled to presume that an attorney would act
25 in an ethical manner with regard to perceived conflicts. *Burger v. Kemp*, 483
26 U.S. 776, 784 (1987) ("we generally presume that the lawyer is fully conscious of
27 the overarching duty of complete loyalty to his or her client."). Therefore, if Mr.
28

Schuler had breached his ethical obligations², the consequences of that breach should not be borne by the Government. *See United States v. Kossak*, 275 F.Supp. 2d 525, 530 (D. Del. 2003), *aff'd*, 178 F.App'x 183 (3d Cir. 2006).

The Defendant was provided counsel of her choosing and made a knowing, intelligent, and voluntary waiver of her *Miranda* rights. If there was an ethical breach by her chosen attorney, it should result in discipline for that attorney, not the government. The Defendant's motion to suppress should be denied.

IV. Conclusion

Based on the foregoing, the Defendant knowingly, intelligently, and voluntarily waived her rights and afforded counsel of her choosing. Therefore, the Court should deny the Defendant's motion to suppress.

Dated: March 30, 2020.

William D. Hyslop
United States Attorney

s/ Patrick J. Cashman
Patrick J. Cashman
Assistant United States Attorney

² The United States notes that there is no evidence before the Court detailing the conversation between Mr. Schuler and the Defendant prior to the Defendant confirming she wanted to be interviewed, thus the government is left to speculate as to Mr. Schuler's advice.

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth Therrien: kentherrien@msn.com

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